UNITED NATIONS

TD

United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/RBP/93
30 July 1993

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Twelfth Session
Geneva, 18 October 1993
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

I. PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda and organization of work

3. Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

4. Activities relating to specific provisions of the Set:

   (a) Studies on restrictive business practices related to the provisions of the Set of Principles and Rules;

   (b) Information and consultations on restrictive business practices;

   (c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

   (d) Technical assistance, advisory and training programmes on restrictive business practices

5. Work programme on restrictive business practices

GE.93-52813 (E)

6. Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

7. Other business

8. Adoption of the report of the Intergovernmental Group of Experts.

II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1. Election of officers

In accordance with rules 18 and 19 of the rules of procedure of the Main Committees of the Board 1/, the Bureau of the Intergovernmental Group of Experts on Restrictive Business Practices shall consist of seven members, including four members from lists A and C combined, two from list B and one from list D, referred to in the annex to General Assembly resolution 1995 (XIX) as amended. In keeping with the cycle of rotation for the election of Chairman and Rapporteur, the Chairman at the eleventh session of the Intergovernmental Group of Experts (the fourth of a seven-session cycle) shall be a representative of one of the States members of list D and the Rapporteur a representative of one of the States members of List A (Africa). Three Vice-Chairmen shall be elected from lists A and C combined, and two from list B.

Item 2. Adoption of the agenda and organization of work

The provisional agenda for the twelfth session was approved at the closing plenary meeting of the eleventh session of the Intergovernmental Group of Experts, on 27 November 1992. 2/

Concerning the organization of the work of the session, the Group has five working days available. It is therefore suggested that the first plenary meeting, on 18 October, be devoted to procedural matters (items 1 and 2) and to introductory statements. The last plenary meeting, on 22 October, would be devoted to item 6 (Provisional agenda for the twelfth session of the Intergovernmental Group of Experts), item 7 (Other business) and item 8 (Adoption of the report of the Intergovernmental Group of Experts).

The afternoon of Thursday, 21 October would need to be kept free for the preparation of the draft report. The remaining meetings (i.e. from the afternoon of 18 October to the morning of 21 October) would be devoted to the substantive items on the agenda (items 3 to 5).

Item 3. Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

Under this item, the Intergovernmental Group of Experts will have before it a note by the UNCTAD secretariat (TD/B/RBP/95) containing extracts of the replies from States to the note of the Secretary-General of

UNCTAD (TD/420/8 (6) of 7 May 1992), requesting information on the steps taken by States and regional groupings, at the national or regional levels, to meet their commitment to the Set of Principles and Rules.

Item 4. Activities relating to specific provisions of the Set:

(a) Studies on RBPs related to the provisions of the Set of Principles and Rules;

(b) Information and consultations on restrictive business practices;

(c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

(d) Technical assistance, advisory and training programmes on restrictive business practices;

(a) Studies on RBPs related to the provisions of the Set of Principles and Rules

At its eleventh session, the Intergovernmental Group of Experts on Restrictive Business Practices requested the UNCTAD secretariat to finalize the study on "Concentration of market power through mergers, takeovers, joint ventures and other acquisitions of control, whether of a horizontal, vertical or conglomerate nature, and its effects on international markets" (TD/B/RBP/80/Rev.1), taking into account the comments made at the eleventh session of the Intergovernmental Group of Experts and written comments to be submitted by member States by the end of January 1993 (agreed conclusions, para. 1 A (i)). 3/

Accordingly, the UNCTAD secretariat has revised the study and the Intergovernmental Group of Experts will have before it the final version of the "Concentration of market power" study (TD/B/RBP/80/Rev.2).

In addition, the Intergovernmental Group of Experts requested the UNCTAD secretariat to prepare a study on "Competition policy and economic reforms in developing and other countries" (agreed conclusions, para. 1 A (ii)) on the basis of the outline as revised by the Group. 4/ A preliminary version of the study (TD/B/RBP/96) will be submitted to the Group at its twelfth session for consideration.

(b) Information and consultations on restrictive business practices

The Second United Nations Conference to Review all Aspects of the Set 5/ in 1990 requested the Secretary-General of UNCTAD to issue and regularly update a directory of restrictive business practices control authorities and to prepare an indicative checklist for requests for information, as well as a checklist of possible steps which countries may wish to follow in the preparation of a case and in their request for consultations.

The Intergovernmental Group of Experts at its eleventh session requested the secretariat to:

(i) revise the checklists contained in TD/B/RBP/78/Rev.1, taking into account the comments made during the current session of the Group and comments received from member States before the end of January 1993;

(ii) prepare and circulate an updated directory of competition authorities; and

(iii) improve the dissemination of information on RBPs in goods and services through its annual and quarterly reports and keep other bodies of UNCTAD informed as appropriate.

The revised checklists, as well as the directory of restrictive business practices control authorities, are contained in TD/B/RBP/78/Rev.2.

In addition, under this item of the agenda - as has become customary at each session of the Intergovernmental Group of Experts - States are invited to undertake, during the session, multilateral or bilateral consultations on issues concerning control of restrictive business practices. Accordingly, the secretariat will provide the facilities necessary for such consultations upon request.

In this connection, member countries of OECD have suggested the following two topics for multilateral consultations:

(a) Appropriate remedies for abuses of market power;

(b) Criteria for assessing fines for violations of competition laws.

The United States of America has volunteered to make a presentation on the first topic and Germany on the second. Other States are invited to make presentations on these or other subjects they may wish to discuss during the session. It is recalled that, as decided by the Second Review Conference, topics should be selected in advance of each session and time made available for the discussions (cf. resolution adopted by the Review Conference, para. 9).

(c) <u>The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation</u>

At its eleventh session (agreed conclusions, section C), the Intergovernmental Group of Experts requested the UNCTAD secretariat to:

(i) continue the elaboration of the model law or laws as follows:

(a) The draft possible elements for articles, as contained in Part I A of TD/B/RBP/81/Rev.1 will be kept unchanged, on the understanding that the model law or laws contains the main elements of a typical RBPs law based on the terminology agreed upon in the Set;

(b) Part I A should be considered in conjunction with a new Part II, containing a commentary specific to each element of Part I. The UNCTAD secretariat should revise the commentary. States members will be invited to make comments on the revised commentary at the twelfth session of the Intergovernmental Group of Experts for the continued elaboration of the draft model law or laws.

Accordingly, the secretariat has prepared a revised commentary to the model law, which is contained in TD/B/RBP/81/Rev.2.

In addition, as requested by the Intergovernmental Group of Experts at its eleventh session (agreed conclusions, para. C (ii)), the UNCTAD secretariat has prepared a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/RBP/94).

(d) Technical assistance, advisory and training programmes on restrictive business practices

The Group of Experts, at its eleventh session (agreed conclusions, section D), requested the UNCTAD secretariat to:

(i) continue to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy to developing countries and to countries in transition; and

(ii) undertake a review of technical cooperation activities in the field of competition policy by member States and international organizations, so as to enable the Intergovernmental Group of Experts at its twelfth session to make an evaluation of how to improve the effectiveness of UNCTAD's technical assistance activities.

Accordingly, a report on UNCTAD's technical assistance, advisory and training services (TD/B/RBP/97) will be submitted to the Intergovernmental Group of Experts, containing a review of the activities by member States, as indicated in their replies to the request for information in this area made by the Secretary-General of UNCTAD in his Note of 13 May 1993.

Item 5. Work programme on restrictive business practices

Under this item, the Intergovernmental Group of Experts is expected to give guidance to the UNCTAD secretariat as to the further work it is requested to undertake.

It is recalled that the United Nations Conference on Trade and Development, at its eighth session, agreed that "UNCTAD should pursue, through the Intergovernmental Group of Experts on Restrictive Business Practices, its work with regard to policies and rules for the control of restrictive business practices in order to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade". 6/

Item 6. Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

During the session, the UNCTAD secretariat will submit a draft provisional agenda for the thirteenth session of the Intergovernmental Group of Experts, the dates of which are tentatively set for 1994.

Item 7. Adoption of the report of the Intergovernmental Group of Experts

Trade and Development Board resolution 228 (XXII) provides that the Group shall submit reports on its work at least once a year to the Board.

Notes

1/ The rules of procedure of the Main Committees are contained in TD/B/740.

2/ Para. 81 of the report of the Intergovernmental Group of Experts on Restrictive Business Practices on its eleventh session (TD/B/39(2)/7-TD/B/RBP/92).

3/ Agreed conclusions adopted by the Intergovernmental Group of Experts at its eleventh session (annex I to the report on the session, op. cit.).

4/ As contained in annex III of the report of the Intergovernmental Group of Experts on Restrictive Businesss Practices on its eleventh session (op. cit.).

5/ Report of the Conference (TD/B/RBP/CONF/3/9).

6/ The Cartagena Commitment, para. 147.